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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 Daniel S. Earle,

19 Plaintiff,

20 vs.

21 Seterus, Inc.,

22 Defendant.

Case No.:

COMPLAINT FOR DAMAGES

FOR VIOLATIONS OF:

- 1. THE TELEPHONE CONSUMER PROTECTION ACT;**
- 2. THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

JURY TRIAL DEMANDED

1 Plaintiff, Daniel S. Earle (hereafter “Plaintiff”), by undersigned counsel, brings
2 the following complaint against Seterus, Inc. (hereafter “Defendant”) and alleges as
3 follows:
4

5 **JURISDICTION**

6 1. This action arises out of Defendant’s repeated violations of the
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), and repeated
8 violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788,
9 *et seq.* (“Rosenthal Act”).
10

11 2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3), Cal. Civ.
12 Code 1788.30(f), 28 U.S.C. § 1331 and 28 U.S.C. § 1367.
13

14 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
15 the acts and transactions giving rise to Plaintiff’s action occurred in this district and/or
16 where Defendant transacts business in this district.
17

18 **PARTIES**

19 4. Plaintiff is an adult individual residing in Playa Del Ray, California, and
20 is a “person” as defined by 47 U.S.C. § 153(39) and Cal Civ. Code § 1788.2(g).
21

22 5. Plaintiff is a “debtor” as defined by Cal. Civ. Code § 1788.2(h).
23

24 6. Defendant is a business entity located in Durham, North Carolina, and is
25 a “person” as the term is defined by 47 U.S.C. § 153(39) and Cal Civ. Code §
26 1788.2(g).
27
28

1 7. Defendant, in the ordinary course of business, regularly, on behalf of
2 itself or others, engages in the collection of consumer debts, and is a “debt collector”
3 as defined by Cal. Civ. Code § 1788.2(c).
4

5
6 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

7 8. Plaintiff is a natural person allegedly obligated to pay a debt asserted to
8 be owed to Defendant.
9

10 9. Plaintiff’s alleged obligation arises from a transaction in which property,
11 services or money was acquired on credit primarily for personal, family or household
12 purposes and is a “consumer debt” as defined by Cal. Civ. Code § 1788.2(f).
13

14 10. At all times mentioned herein where Defendant communicated with any
15 person via telephone, such communication was done via Defendant’s agent,
16 representative or employee.
17

18 11. At all times mentioned herein, Plaintiff utilized a cellular telephone
19 service and was assigned the following telephone number: 424-XXX-0342 (hereafter
20 “Number”).
21

22 12. Within the past four years, Defendant placed multiple calls to Plaintiff’s
23 Number in an attempt to collect a debt.
24

25 13. The aforementioned calls were placed using an automatic telephone
26 dialing system (“ATDS”) and/or by using an artificial or prerecorded voice
27 (“Robocalls”).
28

1 14. When Plaintiff answered Defendant's calls, he heard a significant period
2 of silence followed by a series of beeps before Defendant's automated system
3 attempted to connect him with a live representative.
4

5 15. On one occasion, while speaking with a live representative, Defendant
6 admitted to using an auto dialer.
7

8 16. In December of 2017, during a live conversation, Plaintiff requested that
9 Defendant cease all further calls to his Number.
10

11 17. Thereafter, on numerous occasions, Plaintiff reiterated his request that
12 Defendant stop calling him.
13

14 18. After each request, Defendant's representative stated that he/she would
15 place a "do not call" notation on the account.
16

17 19. However, Defendant ignored Plaintiff's multiple requests and continued
18 to call Plaintiff's Number using an ATDS in an excessive and harassing manner.
19

20 20. Defendant's calls directly and substantially interfered with Plaintiff's
21 right to peacefully enjoy a service that Plaintiff paid for and caused Plaintiff to suffer
22 a significant amount of anxiety, frustration, and annoyance.
23

24 **COUNT I**

25 **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47**
26 **U.S.C. § 227, et seq.**

27 21. Plaintiff incorporates by reference all of the above paragraphs of this
28 complaint as though fully stated herein.

1 22. The TCPA prohibits Defendant from using, other than for emergency
2 purposes, an ATDS and/or Robocalls when calling Plaintiff's Number absent
3 Plaintiff's prior express consent to do so. *See* 47 U.S.C. § 227(b)(1).

5 23. Defendant's telephone system has the earmark of using an ATDS in that
6 Plaintiff, upon answering Defendant's calls, heard silence and a series of beeps before
7 Defendant's automated system attempted to connect him to a representative.

9 24. In addition, Defendant admitted to using an auto dialer.

11 25. Defendant called Plaintiff's Number using an ATDS without Plaintiff's
12 consent in that Defendant either never had Plaintiff's prior express consent to do so, or
13 such consent was effectively revoked when Plaintiff requested that Defendant cease
14 all further calls.

16 26. Defendant continued to willfully call Plaintiff's Number using an ATDS
17 knowing that it lacked the requisite consent to do so in violation of the TCPA.

19 27. Plaintiff was harmed and suffered damages as a result of Defendant's
20 actions.

22 28. The TCPA creates a private right of action against persons who violate
23 the Act. *See* 47 U.S.C. § 227(b)(3).

24 29. As a result of each call made in violation of the TCPA, Plaintiff is
25 entitled to an award of \$500.00 in statutory damages.

27 30. As a result of each call made knowingly and/or willingly in violation of
28 the TCPA, Plaintiff may be entitled to an award of treble damages.

COUNT II

**VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT, Cal. Civ. Code § 1788, et seq.**

31. Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

32. The Rosenthal Act was passed to prohibit debt collectors from engaging in unfair and deceptive acts and practices in the collection of consumer debts.

33. Defendants caused the telephone to ring repeatedly and engaged the Plaintiff in continuous conversations with an intent to annoy the Plaintiff, in violation of Cal. Civ. Code § 1788.11(d).

34. Defendants communicated with the Plaintiff with such frequency as to be considered harassment, in violation of Cal. Civ. Code § 1788.11(e).

35. Plaintiff was harmed and is entitled to damages as a result of Defendant's violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant for:

A. Statutory damages of \$500.00 for each call determined to be in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3);

B. Treble damages for each violation determined to be willful and/or knowing under the TCPA pursuant to 47 U.S.C. § 227(b)(3);

C. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);

1 D. Statutory damages of \$1,000.00 for knowingly and willfully committing
2 violations pursuant to Cal. Civ. Code § 1788.30(b);

3
4 E. Costs of litigation and reasonable attorneys' fees pursuant to Cal. Civ.
5 Code § 1788.30(c);

6 F. Punitive damages; and

7
8 G. Such other and further relief as may be just and proper.

9
10 **TRIAL BY JURY DEMANDED ON ALL COUNTS**

11
12
13 DATED: August 14, 2018

TRINETTE G. KENT

14 By: /s/ Trinette G. Kent
15 Trinette G. Kent, Esq.
16 Lemberg Law, LLC
17 Attorney for Plaintiff, Daniel S. Earle
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